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COURT OF CRIMINAL APPEALS
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IN THE
TEXAS COURT OF CRIMINAL APPEALS
AT AUSTIN

SANDRA JEAN MELGAR,
Appellant

VS.

THE STATE OF TEXAS,
Appellee

ON DISCRETIONARY REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTEENTH
SUPREME JUDICIAL DISTRICT OF TEXAS
AT HOUSTON
CASE NUMBER 14-17-00932-CR

Appeal in Cause Number 1435566
In the 178th District Court
of Harris County, Texas

MOTION FOR AUTHORIZATION TO EXCEED THE WORD LIMIT IN APPELLANT'S BRIEF

TO THE HONORABLE JUDGES OF SAID COURT:

NOW COMES, SANDRA JEAN MELGAR, appellant in the above-styled and numbered cause, by and through her attorneys of record, George McCall Secrest, Jr., and Allison Secrest, and presents this Motion for Authorization to Exceed the Word Limit in Appellant's Brief, and would respectfully show the Court the following:

I.

By judgment dated August 24, 2017, appellant was convicted of the offense of murder in Cause Number 1435566 in the 178th District Court of Harris County, Texas, styled *The State of Texas v. SANDRA JEAN MELGAR*. Her punishment was assessed at twenty-seven (27) years imprisonment in the Texas Department of Criminal Justice Institutional Division and a fine of $10,000.00.

II.

The Appellant on this date has timely submitted her Brief but it exceeds the word limit. Appellant requests the Court to authorize its filing.

III.

As this Court is aware, the record on appeal in this matter is quite lengthy–over 3,000 pages. The reporter's record, consisting of 17 volumes, is 2,112 pages and the clerk's record consists of 920 pages. Additionally, 1,067 exhibits were admitted into evidence. The trial lasted nearly three weeks. Twenty-five (25) witnesses testified at trial, many of whom were the subject of lengthy direct and cross-examinations. To read and comprehensively review a record of this size is a time-consuming and daunting task.

IV.

Sandy Melgar (hereinafter referred to as "Sandy") was accused of murdering her husband. This was a tenuous circumstantial evidence case and the trial was complex. CSU Investigators took over 1,000 photographs at the scene of the crime. Forensic testing for the presence of DNA and blood evidence was done. Trace evidence was submitted for laboratory analysis to both the Harris County Institute of Forensic

Science and the DPS Crime Laboratory. A multitude of laboratory reports were issued and then amended reports followed. Computers and cell phones obtained from the crime scene were submitted to the Harris County Regional Computer Laboratory for analyses. Both blood spatter and fluorescein testing evidence was offered by the prosecution in its effort to prove Sandy's guilt beyond a reasonable doubt.

Sandy was interrogated by Homicide detectives for several hours which was videotaped and later admitted into evidence at trial. A transcript of the videotape, prepared by the Harris County Sheriff's Department, was determined to be inaccurate in several respects and was not offered into evidence. It was, however, fifty (50) pages in length and single-spaced. Accordingly, it was necessary for appellant to utilize time stamps on the admitted videotape to isolate questions and answers in order to accurately cite to the videotape itself–State's Exhibit 673. This necessary but exceedingly laborious process has complicated and, to some extent, elongated the brief.

Sandy suffers from a number of health issues including seizure disorders, rheumatoid arthritis and lupus. These health issues played a significant role in the trial. Medical records and expert testimony in the field of neurology were admitted.

The defense adduced DNA expert witness testimony, as well as expert witness testimony from a well-respected former homicide detective. Medical examiner testimony was extensive in light of the fact that the victim, Sandy's husband, Jaime, was brutally beaten, suffered several skull fractures (as well as broken bones to the front of his face), and was repeatedly stabbed to death. Both out-of-court and in-court demonstrations took place which were the subject of extensive direct and cross-examinations.

V.

Sandy steadfastly denied killing her husband. The defense contended that he was murdered by home invaders. Sandy was found in the bathroom closet tied up tightly with her arms bound behind her back and ankles tied. The back of a chair had been wedged underneath the door knob on the outside of the closet door, preventing it from being opened from the inside. When found by family members of the deceased, Sandy was in hysterics, and did not know that her husband's butchered body had been found on the floor of the bedroom closet. Sandy did not exhibit injuries consistent with such a brutal attack. Sandy had no injuries to her hands, no broken fingernails, she was not bleeding, and had no blood on her or her clothes.

If she were, in fact, the killer, there would have been physical evidence corroborating such. Later evidence showed that none of Jaime Melgar's blood or DNA was found on Sandy and none of her DNA was found on him. Blood evidence was largely confined to the closet where Jaime was killed and in the area immediately outside of the closet. Except for blood on a knife in the bathroom Jacuzzi, forensic testing established there was no blood found anywhere else in the house and there was ***no*** evidence of any effort to clean up blood, e.g. eliminate evidence. However, foreign third-party DNA, not associated with the Melgars or family members, was found on many items of evidentiary significance. The State theorized that the crime scene had possibly been staged which was addressed in the Court of Appeals' opinion.

The central issue raised in this appeal is the legal sufficiency of the evidence. This is a *fact-intensive inquiry* that is subject to "an exacting standard as any factual sufficiency standard." *Butler v. State,* 769 S.W.2d 234 (Tex. Crim. App. 1989). The

countervailing evidence, as well as the evidence which supports the verdict, must be reviewed on appeal. *Brooks v. State,* 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). And, a reasonable doubt may arise from the *absence* of evidence, resulting in legally insufficient evidence. *Mitchell v. State*, 650 S.W.2d 801 (Tex. Cri. App. 1983). Review of legal sufficiency is a "highly individualized assessment." *Carrizales v. State,* 414 S.W.3d 737, 742 (Tex. Crim. App. 2013). It requires an exhaustive examination of the "events occurring *before*, *during* and *after* the commission of the offense." *Cordova v. State,* 698 S.W.2d 107, 111 (Tex. Crim. pp. 1985) (Emphasis added). Additionally, "actions of the defendant which show an understanding and common design to do the prohibited act", if any, must be analyzed. *Id.*

Of special relevance to this case is this rule: a review of the trial record to determine whether the evidence in a given case is legally sufficient is more a test of *quality* than quantity; the *character*, *weight* and *amount* of evidence must *all* be considered. *Brooks, supra,* at 906. The defendant and her counsel maintain the jury's verdict is not rational based on the trial record. This case was poorly investigated, conclusions were reached which were not fairly supported by the evidence, and, in the final analysis, were "based on mere speculation or factually unsupported inferences or presumptions." *Hooper v. State,* 214 S.W.3d 9, 14 (Tex. Crim. App. 2007). As Judge Cochran reasoned in her concurring opinion in *Brooks v. State, supra,* "the standard of proof *and review* in criminal cases has been expressed, not by the quantity of evidence produced or how it might be weighed neutrally, but rather *by the quality of the evidence and the level of certainty* it engenders in the factfinder's mind." *Id.* at 917-918. (Emphasis added). Precisely because of this standard, counsel have

conducted an exhaustive examination and analysis of the trial record–evidence from both the State and defense–to demonstrate that the prosecution did not bear its heavy burden of proving guilt beyond a reasonable doubt.

The Court of Appeals did not fairly analyze all the evidence in the record and other evidence was inaccurately recited or mischaracterized. Key defensive factual points were simply ignored. Counsel respectfully submits that the panel opinion's legal analysis is incorrect and incomplete.

The undersigned counsel have spent considerable time deconstructing the appellate record, breaking it down, and analyzing what did and did not take place at trial. The submitted brief is not a chronological overview of the trial proceedings or a sequential recitation of events that took place at trial. Rather, it attempts to synthesize testimony and exhibits from throughout the trial to better explain what actually occurred, and to demonstrate that the prosecution failed to discharge its burden of proving Sandy's guilt beyond a reasonable doubt.

Testimony and exhibits spread over nearly three weeks of trial are brought together, when relevant, to explain the import of various events or issues. It is respectfully submitted that this process will benefit the Court as it grapples with the sheer volume of evidence and evaluates its legal sufficiency. The brief is a roadmap that discusses and analyzes both the State's and defendant's presentations which will be useful to the Court. Attached hereto is a copy of the Table of Contents from the Brief for Appellant.

It is respectfully submitted that the undersigned counsel cannot, consistent with their ethical and constitutional obligations to their client, discuss and analyze the

testimony and evidence admitted at trial, as well as the legal significance of the same, with sufficient clarity in the length limitations otherwise imposed by Texas Rules of Appellate Procedure 9.4(i)(2)(B).[1] Appellant's original brief in the Court of Appeals on December 6, 2018 was 325 pages in length and 97,352 words. The Court struck the brief and it was redrafted. Significant cuts were made in an effort to shorten its length. Counsel re-submitted the brief, raising only two (2) issues and greatly reducing its length to 205 pages and 57,521 words–a reduction from the original of 120 pages and nearly 40,000 words. On February 19, 2019, the revised brief was accepted by the Court of Appeals.

VI.

The Brief for Appellant on Petition for Discretionary Review filed this date is 27,389 words–a reduction of more than 30,000 words from the revised brief filed in and accepted by the Court of Appeals. Given the complexities of this case, the gravity of the punishment, the substantial countervailing evidence which must be considered, and the significant and "exacting" analysis that, constitutionally, must be undertaken in a legal sufficiency review of the Court of Appeals' opinion, it is respectfully

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[1]In its Statement of Facts, the undersigned counsel have not attempted to analyze the evidence as to the legal sufficiency of the evidence in light of the strictures imposed by T.R.A.P. 38.1(g): "The brief must state concisely and *without argument* the facts pertinent to the issues or points presented." (Emphasis added). As a result, the issue raised here –legal sufficiency of the evidence–necessitates some repeating of the evidence in the "Argument" portion of the brief to give context to that evidence and apply the legal analysis standard to it. This results in a lengthier brief than one where the points of error do not concern the legal sufficiency of the evidence.

It is also respectfully submitted that the evidence presented in this case, due to its inherent circumstantial nature, is far more fact-intensive and complex than that litigated in most death penalty cases, at least those tried by undersigned counsel. (*See* T.R.A.P. 9.4(i)(2)(A) which authorizes 37,500 words, if computer-generated.)

requested that this Court allow the filing of an enlarged brief in this case and that this motion be granted.

WHEREFORE, PREMISES CONSIDERED, Appellant prays that this Court grant the Motion for Authorization to Exceed the Word Limit in Appellant's Brief.

Respectfully submitted,

/s/ George M. Secrest, Jr.

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SANDRA JEAN MELGAR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Authorization to Exceed the Word Limit in Appellant's Brief has been furnished to Ms. Stacey M. Soule, State Prosecuting Attorney, information@spa.texas.gov and Mr. Clinton Morgan, morgan_clinton@dao.hctx.net, on this 4th day of November, 2020.

/S/ George McCall Secrest, Jr.
GEORGE McCALL SECREST, JR.

ATTACHMENT

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